Applicant Initiated Interview Request Form

Application No.: 09/929,886   First Named Applicant: Allen

Examiner: Chencinski   Art Unit: 3695   Status of Application: Rejection

Tentative Participants:

(1) Holm, Prosecuting Attorney   (2) Chencinski

(3) Kyle   (4) Subramanian

Proposed Date of Interview: Week of Sept 21st   Proposed Time: PM in D.C.   AM/PM

Type of Interview Requested:

(1) [✓] Telephonic   (2) [ ] Personal   (3) [ ] Video Conference

Exhibit To Be Shown or Demonstrated: [ ] YES   [ ] NO

If yes, provide brief description: _____

Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) 101, 103	all pending claims	All cited art	[ ]	[ ]	[ ]
(2)			[ ]	[ ]	[ ]
(3)			[ ]	[ ]	[ ]
(4)			[ ]	[ ]	[ ]

[✓] Continuation Sheet Attached *(Proposed Response)*

Brief Description of Argument to be Presented:

I have attached a draft response that explains the issues and provides a proposed response. If the proposed response

does not overcome the 101 and 103 rejections, I want to have the Examiner and his primary and supervisor tell me why.

An interview was conducted on the above-identified application on _____ .
NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).
This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Applicant/Applicant's Representative Signature
Chris L. Holm (213-892-4406)
Typed/Printed Name of Applicant or Representative
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Registration Number, if applicable

Examiner/SPE Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	:	Allen et al.			
Serial No.	:	09/929,886	**Group Art Unit**	:	3695 3692
Filed	:	August 15, 2001	**Examiner**	:	Chencinski
For	:	*METHOD AND SYSTEM FOR AUTOMATIC EXECUTION OF A SECURITIES TRANSACTION*			

AMENDMENT AND REQUEST FOR RECONSIDERATION
(37 C.F.R. § 1.111)

Mail Stop Amendment
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated June 17, 2009.

Amendments to the claims are reflected in the listing of claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 21 of this paper.

AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of claims:

1 - 11. (cancelled)

12.   (currently amended) A method implemented at least partially in a programmed computer for ~~automatically~~ processing a round-lot securities order on a single securities exchange, the method comprising:

assigning an execution allocation option to a security, wherein the execution allocation option is one of three options selected from the group consisting of allocate execution to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd and allocate a percentage of execution to book;

~~automatically~~ receiving <u>by the programmed computer,</u> the round-lot securities order for the security, after assigning the execution allocation option;

~~automatically~~ determining <u>by the programmed computer,</u> whether the securities order includes an indicator requesting automatic execution<u>, wherein the indicator requesting</u> <u>automatic execution directs the single securities exchange to execute at least a portion of the</u> <u>securities order at either a best bid or best offer as reflected in a quote price for the security that is</u> <u>published by the single securities exchange and also acknowledges that the securities order will</u> <u>not be exposed to an auction market of the single securities exchange for possible price</u>

improvement;

exposing the securities order to the an auction market of the single securities exchange for possible price improvement if the securities order does not include the an indicator requesting automatic execution;

automatically executing by the programmed computer, at least a portion of the securities order at the best bid or best offer as reflected in the published a quote price for the security, without exposing the securities order for possible price improvement, if the securities order includes the an indicator requesting automatic execution;

automatically determining by the programmed computer, the assigned execution allocation option; and

after automatically executing at least a portion of the securities order, automatically allocating by the programmed computer, shares of the automatic execution among contra parties according to the assigned execution allocation option.

13. (original) A method according to claim 12, wherein the securities order is a limit order.

14. (original) A method according to claim 12, wherein the securities order is a market order.

15. (original) A method according to claim 12, further comprising sending an order execution report.

16.   (cancelled)

17.   (currently amended) A method according to claim 12, wherein automatically executing further comprises at least partially fulfilling the securities order from a display book order.

18.   (currently amended) A method according to claim 12, further comprising at least partially fulfilling the securities order from an auction market crowd order after automatically executing the securities order.

19.   (currently amended) A method according to claim 12, further comprising at least partially fulfilling the securities order from a display book order after automatically executing the securities order.

20.   (cancelled)

21.   (currently amended) A computer-readable medium having computer executable software code stored thereon, the code for ~~automatically~~ processing a round-lot securities order on a single securities exchange, the code comprising:

code to assign an execution allocation option to a security, wherein the execution allocation option is one of three options selected from the group consisting of allocate execution to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd and allocate a percentage of execution to book;

code to ~~automatically~~ receive the round-lot securities order for the security, after

assigning the execution allocation option;

code to ~~automatically~~ determine whether the securities order includes an indicator

requesting automatic execution, wherein the indicator requesting automatic execution directs the

single securities exchange to execute at least a portion of the securities order at either a best bid

or best offer as reflected in a quote price for the security that is published by the single securities

exchange and also acknowledges that the securities order will not be exposed to an auction

market of the single securities exchange for possible price improvement;

code to expose the securities order to the ~~an~~ auction market of the single securities

exchange for possible price improvement if the securities order does not include the ~~an~~ indicator

requesting automatic execution;

code to automatically execute at least a portion of the securities order at the best

bid or best offer as reflected in the published ~~a~~ quote price for the security, without exposing the

securities order for possible price improvement, if the securities order includes the ~~an~~ indicator

requesting automatic execution;

code to ~~automatically~~ determine the assigned execution allocation option;

and

after automatically executing at least a portion of the securities order, code

to ~~automatically~~ allocate shares of the automatic execution among contra parties according to the

assigned execution allocation option.

22.   (currently amended) A programmed computer for ~~automatically~~ processing

a round-lot securities order on a single securities exchange, comprising:

a memory having at least one region for storing computer executable program code; and

a processor for executing the program code stored in the memory; wherein the program code comprising:

code to assign an execution allocation option to a security, wherein the execution allocation option is one of three options selected from the group consisting of allocate execution to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd and allocate a percentage of execution to book;

code to ~~automatically~~ receive the round-lot securities order for the security, after assigning the execution allocation option;

code to ~~automatically~~ determine whether the securities order includes an indicator requesting automatic execution, <u>wherein the indicator requesting automatic execution directs the single securities exchange to execute at least a portion of the securities order at either a best bid or best offer as reflected in a quote price for the security that is published by the single securities exchange and also acknowledges that the securities order will not be exposed to an auction market of the single securities exchange for possible price improvement</u>;

code to expose the <u>securities</u> order to <u>the</u> ~~an~~ auction market of the single securities exchange for possible price improvement if the securities order does not include <u>the</u> ~~an~~ indicator requesting automatic execution;

code to automatically execute at least a portion of the <u>securities</u> order at <u>the best bid or best offer as reflected in the published</u> ~~a~~ quote price <u>for the security</u>, without exposing the <u>securities</u> order for possible price improvement, if the securities order includes <u>the</u> ~~an~~ indicator requesting automatic execution;

code to ~~automatically~~ determine the assigned execution allocation option;

and

after automatically executing at least a portion of the <u>securities</u> order, code to ~~automatically~~ allocate shares of the automatic execution among contra parties according to the assigned execution allocation option.

23. (currently amended) A method implemented at least partially in a programmed computer for ~~automatically~~ processing a round-lot limit buy or sell order for a security on a single securities exchange with an auction market crowd, the method comprising:

assigning an execution allocation option to the security, wherein the execution allocation option is one of three options selected from the group consisting of allocate execution to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd and allocate a percentage of execution to book;

~~automatically~~ receiving <u>by the programmed computer,</u> the round-lot limit order for the security, after assigning the execution allocation option;

~~automatically~~ determining <u>by the programmed computer,</u> whether the limit order includes an indicator requesting automatic execution<u>, wherein the indicator requesting automatic execution directs the single securities exchange to execute at least a portion of the limit order at either a best offer or best bid price that is published by the single securities exchange and also acknowledges that the limit order will not be exposed to an auction market crowd of the single securities exchange for possible price improvement</u>;

~~automatically~~ determining <u>by the programmed computer,</u> whether the limit order qualifies for automatic execution;

exposing the limit order to the auction market crowd for possible price

improvement if the limit order does not include the ~~an~~ indicator requesting automatic execution,

or if the limit order does not qualify for automatic execution;

automatically executing by the programmed computer, at least a portion of the

limit order against the ~~a~~ respective best offer or best bid for the security, without exposing the

limit order to the auction market crowd for possible price improvement, if the limit order

includes the ~~an~~ indicator requesting automatic execution and if the limit order qualifies for

automatic execution;

~~automatically~~ determining by the programmed computer, the assigned

execution allocation option; and

after automatically executing at least a portion of the limit order,

~~automatically~~ allocating by the programmed computer, shares of the automatic execution among

contra parties according to the assigned execution allocation option.

24.   (currently amended) A method implemented at least partially in a

programmed computer for ~~automatically~~ processing a round-lot market buy or sell order for a

security on a single securities exchange with an auction market crowd, the method comprising:

assigning an execution allocation option to the security, wherein the execution

allocation option is one of three options selected from the group consisting of allocate execution

to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

~~automatically~~ receiving by the programmed computer, the round-lot market order

for the security, after assigning the execution allocation option;

automatically determining by the programmed computer, whether the market order includes an indicator requesting automatic execution, wherein the indicator requesting automatic execution directs the single securities exchange to execute at least a portion of the market order at either a best offer or best bid price that is published by the single securities exchange and also acknowledges that the market order will not be exposed to an auction market crown of the single securities exchange for possible price improvement;

automatically determining by the programmed computer, whether the market order qualifies for automatic execution;

exposing the market order to the auction market crowd for possible price improvement if the market order does not include the an indicator requesting automatic execution, or if the market order does not qualify for automatic execution;

automatically executing by the programmed computer, at least a portion of the market order against the a respective best offer or best bid for the security, without exposing the market order to the auction market crowd for possible price improvement, if the market order includes the an indicator requesting automatic execution and the market order qualifies for automatic execution;

automatically determining by the programmed computer, the assigned execution allocation option; and

after automatically executing at least a portion of the market order, automatically allocating by the programmed computer, shares of the automatic execution among contra parties according to the assigned execution allocation option.

25-41. (cancelled)

42.   (currently amended) A method implemented at least partially in a

programmed computer for ~~automatically~~ processing a round-lot securities order on a single

securities exchange, the method comprising:

assigning an execution allocation option to a security, wherein the execution

allocation option is one of three options selected from the group consisting of allocate execution

to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

~~automatically~~ receiving <u>by the programmed computer,</u> the round-lot securities

order for the security, after assigning the execution allocation option;

~~automatically~~ determining <u>by the programmed computer,</u> whether the securities

order includes an indicator requesting automatic execution and a price of the <u>securities</u> order,

<u>wherein the indicator requesting automatic execution directs the single securities exchange to</u>

<u>execute at least a portion of the securities order at either a best bid or best offer as reflected in a</u>

<u>quote price for the security that is published by the single securities exchange and also</u>

<u>acknowledges that the securities order will not be exposed to an auction market crowd of the</u>

<u>single securities exchange for possible price improvement;</u>

exposing the securities order to <u>the</u> ~~an~~ auction market <u>crowd</u> of the single

securities exchange for possible price improvement if the securities order does not include <u>the</u> ~~an~~

indicator requesting automatic execution, wherein exposing the securities order to <u>the</u> ~~an~~ auction

market <u>crowd</u> of the single securities exchange for possible price improvement is a regular

execution;

~~automatically~~ comparing <u>by the programmed computer,</u> the price of the <u>securities</u>

order to <u>the published</u> ~~a~~ quote <u>price for the security</u> if the securities order includes <u>the</u> ~~an~~

indicator requesting automatic execution;

~~automatically~~ changing <u>by the programmed computer,</u> the status of the <u>securities</u>

order from automatic execution to regular execution if the securities order includes <u>the</u> ~~an~~

indicator requesting automatic execution and the price of the <u>securities</u> order is not equal to or

better than the <u>published</u> quote <u>price for the security</u>;

automatically executing <u>by the programmed computer,</u> the <u>securities</u> order on <u>the</u>

~~an~~ auction market of the <u>single</u> securities exchange if the securities order includes <u>the</u> ~~an~~

indicator requesting automatic execution and the price of the <u>securities</u> order is equal to or better

than the <u>published</u> quote <u>price for the security</u>;

~~automatically~~ determining <u>by the programmed computer,</u> the assigned

execution allocation option; and

after automatically executing the <u>securities</u> order, ~~automatically~~ allocating

<u>by the programmed computer,</u> shares of the automatic execution among contra parties according

to the assigned execution allocation option.

43.   (currently amended) A method according to claim 42, wherein the

securities order further includes a size, the method further comprising:

comparing the size of the <u>securities</u> order with a respective interest in the security;

and

changing the status of at least a portion of the <u>securities</u> order from automatic

execution to regular execution if the size is greater than the interest.

44-45. (cancelled)

46.   (currently amended) A method according to claim 42, further comprising sending an execution report for the <u>securities</u> order.

47.   (currently amended) A method according to claim 42, <u>wherein the book is a display book, the method</u> further comprising at least partially fulfilling the <u>securities</u> order with an order on <u>the</u> a display book.

48.   (currently amended) A method according to claim 42, further comprising at least partially fulfilling the <u>securities</u> order with an order from <u>the</u> an auction market crowd.

49.   (currently amended) A method according to claim 42, wherein the <u>published</u> quote <u>price for the security</u> includes a best bid price for the security, the securities order is a sell order and the price of the <u>securities</u> order is greater than the best bid price.

50.   (currently amended) A method according to claim 42, wherein the <u>published</u> quote <u>price for the security</u> includes a best offer price for the security, the securities order is a buy order and the price of the <u>securities</u> order is less than the best offer price.

51.   (cancelled)

52.   (currently amended) A computer-readable medium having computer

executable software code stored thereon, the code for ~~automatically~~ processing a round-lot

securities order on a single securities exchange, the code comprising:

code to assign an execution allocation option to a security, wherein the execution

allocation option is one of three options selected from the group consisting of allocate execution

to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

code to ~~automatically~~ receive the round-lot securities order for the security, after

assigning the execution allocation option;

code to ~~automatically~~ determine whether the securities order includes an indicator

requesting automatic execution and a price of the <u>securities</u> order, <u>wherein the indicator</u>

<u>requesting automatic execution directs the single securities exchange to execute at least a portion</u>

<u>of the securities order at either a best bid or best offer as reflected in a quote price for the security</u>

<u>that is published by the single securities exchange and also acknowledges that the securities order</u>

<u>will not be exposed to an auction market crowd of the single securities exchange for possible</u>

<u>price improvement</u>;

code to expose the securities order to <u>the</u> ~~an~~ auction market <u>crowd</u> of the single

securities exchange for possible price improvement if the securities order does not include <u>the</u> ~~an~~

indicator requesting automatic execution, wherein exposing the securities order to <u>the</u> ~~an~~ auction

market <u>crowd</u> of the single securities exchange for possible price improvement is a regular

execution;

code to ~~automatically~~ compare the price of the <u>securities</u> order to <u>the published</u> ~~a~~

quote <u>price for the security</u> if the securities order includes <u>the</u> ~~an~~ indicator requesting automatic

execution;

code to ~~automatically~~ change the status of the <u>securities</u> order from automatic execution to regular execution if the securities order includes <u>the</u> ~~an~~ indicator requesting automatic execution and the price of the <u>securities</u> order is not equal to or better than the <u>published</u> quote <u>price for the security</u>;

code to automatically execute the <u>securities</u> order on <u>the</u> ~~an~~ auction market of the <u>single</u> securities exchange if the securities order includes <u>the</u> ~~an~~ indicator requesting automatic execution and the price of the <u>securities</u> order is equal to or better than the <u>published</u> quote <u>price for the security</u>;

code to ~~automatically~~ determine the assigned execution allocation option; and

after automatically executing the <u>securities</u> order, code to ~~automatically~~ allocate shares of the automatic execution among contra parties according to the assigned execution allocation option.

53.   (currently amended) A programmed computer for ~~automatically~~ processing a round-lot securities order on a single securities exchange, comprising:

a memory having at least one region for storing computer executable program code; and

a processor for executing the program code stored in the memory; wherein the program code comprises:

code to assign an execution allocation option to a security, wherein the execution allocation option is one of three options selected from the group consisting of allocate execution to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

code to ~~automatically~~ receive the round-lot securities order for the security, after

assigning the execution allocation option;

code to ~~automatically~~ determine whether the securities order includes an indicator

requesting automatic execution and a price of the <u>securities</u> order, <u>wherein the indicator</u>

<u>requesting automatic execution directs the single securities exchange to execute at least a portion</u>

<u>of the securities order at either a best bid or best offer as reflected in a quote price for the security</u>

<u>that is published by the single securities exchange and also acknowledges that the securities order</u>

<u>will not be exposed to an auction market crowd of the single securities exchange for possible</u>

<u>price improvement</u>;

code to expose the securities order to <u>the</u> ~~an~~ auction market <u>crowd</u> of the single

securities exchange for possible price improvement if the securities order does not include <u>the</u> ~~an~~

indicator requesting automatic execution, wherein exposing the securities order to <u>the</u> ~~an~~ auction

market <u>crowd</u> of the single securities exchange for possible price improvement is a regular

execution;

code to ~~automatically~~ compare the price of the <u>securities</u> order to <u>the published</u> ~~a~~

quote <u>price for the security</u> if the securities order includes <u>the</u> ~~an~~ indicator requesting automatic

execution;

code to ~~automatically~~ change the status of the <u>securities</u> order from automatic

execution to regular execution if the securities order includes <u>the</u> ~~an~~ indicator requesting

automatic execution and the price of the <u>securities</u> order is not equal to or better than the

<u>published</u> quote <u>price for the security</u>;

code to automatically execute the <u>securities</u> order on <u>the</u> ~~an~~ auction market of the

single securities exchange if the securities order includes the an indicator requesting automatic

execution and the price of the securities order is equal to or better than the published quote price

for the security;

> code to automatically determine the assigned execution allocation option;

and

> after automatically executing the securities order, code to automatically

allocate shares of the automatic execution among contra parties according to the assigned

execution allocation option.

> 54.   (currently amended) A method implemented at least partially in a

programmed computer for automatically processing a round-lot securities order on a single

securities exchange, the method comprising:

> assigning an execution allocation option to a security, wherein the execution

allocation option is one of three options selected from the group consisting of allocate execution

to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

> automatically receiving by the programmed computer, the round-lot securities

order for the security, after assigning the execution allocation option;

> automatically determining by the programmed computer, whether the securities

order includes an indicator requesting automatic execution and a size of the securities order,

wherein the indicator requesting automatic execution directs the single securities exchange to

automatically execute at least a portion of the securities order and also acknowledges that the

securities order will not be exposed to an auction market crowd of the single securities exchange

for possible price improvement;

exposing the securities order to the ~~an~~ auction market crowd of the single

securities exchange for possible price improvement if the securities order does not include the ~~an~~

indicator requesting automatic execution, wherein exposing the securities order to the ~~an~~ auction

market crowd of the single securities exchange for possible price improvement is a regular

execution;

~~automatically~~ comparing by the programmed computer, the size of the securities

order to a respective interest in the security if the securities order includes the ~~an~~ indicator

requesting automatic execution, wherein interest in the security is a number of shares of the

security at a best offer or best bid price that is published by the single securities exchange;

~~automatically~~ changing by the programmed computer, the status of at least a

portion of the securities order from automatic execution to regular execution if the securities

order includes the ~~an~~ indicator requesting automatic execution and the size of the securities order

is greater than the interest;

automatically executing by the programmed computer, at least a portion of the

securities order on the ~~an~~ auction market of the single securities exchange if the securities order

includes the indicator requesting automatic execution;

~~automatically~~ determining by the programmed computer, the assigned execution

allocation option; and

after automatically executing at least a portion of the securities order,

~~automatically~~ allocating by the programmed computer, shares of the automatic execution among

contra parties according to the assigned execution allocation option.

55.   (currently amended) A method according to claim 54, wherein the

securities order further includes a price, the method further comprising:

comparing the price of the <u>securities</u> order to a <u>published</u> quote <u>for the security</u>;

and

changing the status of the <u>securities</u> order from automatic execution to regular

execution if the price of the <u>securities</u> order is not equal to or better than the <u>published</u> quote <u>for</u>

<u>the security</u>.

56.   (original) A method according to claim 54, wherein the securities order is

a limit order.

57.   (original) A method according to claim 54, wherein the securities order is

a market order.

58-86. (cancelled)

87.   (currently amended) A method implemented at least partially in a

programmed computer for ~~automatically~~ processing a round-lot securities order on a single

securities exchange with an auction market crowd, the method comprising:

assigning an execution allocation option to a security, wherein the execution

allocation option is one of three options selected from the group consisting of allocate execution

to crowd only, allocate execution to book only, or allocate a percentage of execution to crowd

and allocate a percentage of execution to book;

~~automatically~~ receiving <u>by the programmed computer,</u> the round-lot securities

order for the security, after assigning the execution allocation option;

~~automatically~~ determining <u>by the programmed computer,</u> whether the securities

order is identified for automatic execution<u>, wherein automatic execution directs the single</u>

<u>securities exchange to execute at least a portion of the securities order at a quote price for the</u>

<u>security that is published by the single securities exchange and also acknowledges that the</u>

<u>securities order will not be exposed to an auction market crowd of the single securities exchange</u>

<u>for possible price improvement</u>;

exposing the securities order to the auction market crowd <u>of the single securities</u>

<u>exchange</u> for possible price improvement if the securities order is not identified for automatic

execution;

automatically executing <u>by the programmed computer,</u> the securities order against

a published quote <u>price for the security</u> if the securities order is identified for automatic

execution;

~~automatically~~ updating <u>by the programmed computer,</u> the published quote <u>for the</u>

<u>security</u> based on the <u>execution of the securities</u> order if the securities order was automatically

executed against the published quote <u>for the security</u>;

~~automatically~~ determining <u>by the programmed computer,</u> the assigned execution

allocation option; and

after automatically executing the <u>securities</u> order, ~~automatically~~ allocating <u>by the</u>

<u>programmed computer,</u> shares of the automatic execution among contra parties according to the

assigned execution allocation option.

88.   (currently amended) A method according to claim 87, wherein a size of

the published quote <u>for the security</u> after updating reflects <u>execution</u> a size of the securities order.

89.   (currently amended) A method according to claim 87, wherein a size of

the published quote <u>for the security</u> after updating represents a minimum quote size, but does not

necessarily reflect <u>execution</u> a size of the securities order.

90-92. (cancelled)

REMARKS

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated June 17, 2009, the shortened statutory period for response having expired on September 17, 2009. A petition and fee for an extension of time are included. In the event that the Commissioner determines that a further extension of time is required, the undersigned hereby petitions for any such extension of time, and authorizes the Commissioner to charge the Milbank deposit account 13-3250 for any required fee.

In the Office Action, the Examiner has checked both Final (box 2a) and non-final (box 2b). Since the previous response was filed in conjunction with a Request for Reconsideration, which the Examiner has acknowledged in paragraph 1, the undersigned will assume that the check in box 2a (Final) is an error on the part of the Examiner and that the June 17, 2009 paper is a non-final office action. If that understanding is incorrect, then the undersigned respectfully submits that a first action final rejection after filing of an RCE with a responsive amendment is improper and asks that the final office action be withdrawn and issued as a non-final action.

If the Commissioner determines that the Examiner was correct in issuing a final rejection, then the undersigned hereby petitions the Commissioner to accept this submission as part of a Request for Continued Examination, petitions for a Request for Continued Examination, and authorizes the Commissioner to charge any required RCE fee to the Milbank deposit account 13-3250.

I.   Status of the Claims

Please amend claims 12, 17, 18, 19, 21, 22, 23, 24, 42, 43, 46, 47, 48, 49, 50, 52, 53, 54, 55, 87, 88 and 89 as indicated above. Claims 1-11, 16, 20, 25-41, 44-45, 51, 58-86, and

90-92 were previously cancelled without prejudice. Claims 12-15, 17-19, 21-24, 42, 43, 46-50, 52-57 and 87-89 are now pending in the application. Pending claims 12, 21, 22, 23, 24, 42, 52, 53, 54 and 87 are independent claims.

II.   Rejections under 35 U.S.C. § 101

In the Office Action, the Examiner has rejected pending method claims 12-19, 23, 24, 42-50, 54 and 87-89 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. (Please note that claims 16, and 44-45 were previously cancelled without prejudice). As the Examiner and the undersigned well know, the boundary of allowable subject matter under § 101 has been a moving target and it may continue to move after the U.S. Supreme Court issues a decision in the pending *Bilski* appeal. Without the benefit of that future decision, the undersigned has amended the method claims in view of recent guidance developed with other Examiners in related art units at the U.S. Patent and Trademark Office during prosecution of other applications, and respectfully submits that the amended method claims are directed to statutory subject matter under § 101. If the Examiner does not agree, the undersigned would appreciate an opportunity to discuss the § 101 rejection with the primary and supervisory examiner, to avoid any further § 101 rejections.

III.   Rejections under 35 U.S.C. § 103

In the Office Action, the Examiner has rejected pending claims 12-15, 17-19, 21-24, 42, 46-48 and 52-57 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,173,270 to *Cristofich*, what the Examiner characterizes as applicant's admitted prior art (AAPA), a speech by SEC Commissioner Glassman ("*Glassman*"), U.S. Patent No. 6,393,409 to *Young* et al., U.S. Patent No. 6,098,051 to *Lupien*, and U.S. Patent No. 4,412,287 to *Braddock*.

Applicants have previously disputed whether applicant's "AAPA" is a proper

reference and those arguments are expressly preserved for appeal, but assuming here for argument sake that the "AAPA" is a proper reference, then even after combining 6 different "references" to make a § 103 rejection, the Examiner has still failed to capture all of the features that are present in the claims. Further, the Examiner's proposed combination of 6 different "references" would not enable the claims, as required to render the claims obvious.

As just one example, claim 12 recites (emphasis added):

assigning an execution allocation option to a security, wherein the execution allocation option is **one** *of* **three** options selected from the group consisting of

allocate execution to crowd only,

allocate execution to book only, or

allocate a percentage of execution to crowd and allocate a percentage of execution to book;

In the Office Action with respect to claim 12 at page 7, the Examiner relies on *Lupien* (5:55-63; 11:52-58; and 21:53-57) to disclose allocate execution to book only. However, there is no statement or indication in the Office Action that points to any part of any reference that discloses or suggests the other two allocation options clearly present in claim 12 of **allocate execution to crowd only** or **allocate a percentage of execution to crowd and allocate a percentage of execution to book**. These features are present in every pending claim!!. Because these features are present in every claim and the § 103 rejection fails to identify these features in any particular reference, or explain how those features would be combined to creating an enabling disclosure, the § 103 rejection of all pending claims is not supported and should be withdrawn and the pending claims allowed.

In previous response to rejections, other distinctions between the cited references

and the pending claims have been articulated. In the interest of brevity, those arguments are

incorporated by reference. If the rejection maintained and the application is appealed to the

Board, Applicants intend to include those previous arguments in favor of allowance where

relevant.

Further, the Examiner **incorrectly** states at page 6 (emphasis added):

> Applicant's specification defines at least some
> embodiments of the invention which involve a customer's
> specifying 'automatic execution' of an order as related to a
> customer's limit order (specification, p. 20, ll 7- p.21, l 3). In this
> embodiment, the transaction executes in the same manner as a limit
> order without Applicant's 'indication' through an 'NX' designation
> for the transaction prior to Applicant's invention. The price of the
> limit order would be the same with or without Applicant's
> invention. If the specialist has offers in hand which are equal to or
> better than the customer's limit price and if the other parameters of
> the customer's order are satisfied in all respects the order would
> execute without going to the floor. Applicant's designation by the
> customer of 'automatic execution' of the order in the claimed
> limitations and as supported by the specification would be a
> convenience which has not substantive role in the process or
> method. In other words, an automatic indication symbol such as
> 'NX' is non-functional descriptive material in the context of
> patentability. The indication and the indicator symbol may well be
> a convenience with positive marketing appeal, but it does not
> receive patentable weight.

Applicants also respectfully disagree that designating an order for automatic

execution as recited in the claims, whether the designation is through an "NX" symbol or in some

other manner is non-functional.

Claim 12 recites in part: determining by the programmed computer, whether the

securities order includes an indicator requesting automatic execution, wherein the indicator

requesting automatic execution directs the single securities exchange to execute at least a portion

of the securities order at either a best bid or best offer as reflected in a quote price for the security

that is published by the single securities exchange and also acknowledges that the securities order

will not be exposed to an auction market of the single securities exchange for possible price improvement;

exposing the securities order to the auction market of the single securities exchange for possible price improvement if the securities order does not include the indicator requesting automatic execution;

automatically executing by the programmed computer, at least a portion of the securities order at the best bid or best offer as reflected in the published quote price for the security, without exposing the securities order for possible price improvement, if the securities order includes the indicator requesting automatic execution; ...

Thus, according to claim12 , if the securities order does not include an indicator requesting automatic execution, the order is exposed to the auction market of the single securities exchange for possible price improvement. Alternatively, if the securities order includes an indicator requesting automatic execution, at least a portion of the order is automatically executed at the best bid or best offer as reflected in the published quote price for the security.

According to the Examiner's comments in the Office Action, those two alternatives render an identical result, and therefore the designation for automatic execution is non-functional. **That is incorrect** because with exposure for possible price improvement the execution price may be different than the quote price.

The following example will help to illustrate the flaw in the Examiner's statement. Assume the published market quote for the security is 1000 shares bid to buy at $31.11 and 800 shares offered to sell at $31.14. Because the number of shares or the size is represented in increments of 100 share round lots, that published quote is illustrated as:

31.11	31.14
10	8

At NYSE before the instant invention, round lot orders were exposed to the auction market for possible price improvement. Exposure of orders to the auction market for possible price improvement applied to round lots of limit orders and market orders. Exposing an order for possible price improvement meant that any brokers gathered at the post for the listed security would have an opportunity to take a more aggressive price position than the price position represented by the published quote. So, before the instant invention and with the market quote as illustrated above, if a limit order arrived to buy 600 shares priced at $31.14, the specialist for the security was not allowed to immediately execute that incoming 600 share limit order at $31.14, even though the quote showed that there were 800 shares offered for sale at the same $31.14 price. Instead, the specialist was required to first expose the limit order to the auction market for possible price improvement. In this example, when the limit order to buy 600 shares at $31.14 was exposed for possible price improvement, a trader in the crowd might decide to sell 600 shares at $31.13. Under that circumstance, the 600 share buy order would get price improvement of $0.01. The limit buy order would execute at $31.13, not at the quoted offer to sell price of $31.14.

Before the instant invention, market orders were handled in a similar way. So, for example with the quote as illustrated above, if a market order to buy 600 shares arrived, the specialist was required to expose the market order to the auction market for possible price improvement. With the quote as indicate above, if a market order to buy 600 shares arrived and

it was exposed for possible price improvement, another broker might have decided to sell 600

shares at $31.13, and the market order to buy would similarly get $0.01 of price improvement.

Thus, before the instant invention, limit and market orders in round lot sizes were exposed to the

auction market for possible price improvement. Exposure for possible price improvement did

not mean that an order got price improvement, but round lot orders were exposed to the auction

market for possible price improvement.

The NYSE rules regarding order exposure to the auction market for possible price

improvement changed on January 4, 2001 when the SEC approved NYSE's proposed Rule

Change to implement NYSe Direct+. The claims of the instant patent application are directed to

features of NYSe Direct + as described in that proposed rule change. The initial proposed rule

change was published on June 15, 2000 in the Federal Register at 65 FR 37587. The

authorization for the rule change was published on January 4, 2001 in the Federal Register at 66

FR 834. Copies of 65 FR 37587 and 66 FR 834 were attached to a previous response. Under the

proposed new rule, automatic execution ("auto ex") for certain types of limit orders was

available. As stated in 65 FR 37587 and 66 FR 834, auto ex orders would receive an automatic

execution without being exposed to the auction market.

Under the new rule, and as recited in claim 12, at least a portion of the order is

automatically executed at a quote price, without exposing the order for possible price

improvement, if the order includes an indicator requesting automatic execution.

So, with the same market quote from the example above:

31.11	31.14
10	8

under the new rule, if a limit order identified for automatic execution arrived to buy 600 shares priced at $31.14, the specialist for the security immediately executed that incoming 600 share limit order at the quoted offer of $31.14. So, with the same level of possible price improvement available in the auction market, the two alternatives recited in claim 12 would render different results depending on whether the incoming order is designated for automatic execution:

Limit order to buy **not** designated for automatic execution	Limit order to buy designated for automatic execution
Order exposed for possible price improvement Price improvement of $0.01 provided	**Automatic execution** at the quote price **without exposing** for possible price improvement
Execution price **$31.13**	Execution price **$31.14**

__The claimed designation for automatic execution is a functional element and may produce a different execution price depending on whether the automatic execution designation is present or absent__.

Hasbrouck, which is a reference that the Examiner relied on in an earlier office action, specifically describes the situation requiring exposure for price improvement prior to the instant invention, stating (emphasis added): "Because the NYSE specialist must expose market orders to the crowd and does not automatically execute them against the posted quote, 'price improvement' is possible: market orders may be executed at better than the quoted price and limit orders may be executed at better than the limit price." *Hasbrouck*, page 13, last paragraph.

Motivation to combine references. For every one of the rejections, the Examiner's stated motivation is: "a desire to provide a data processing method and system for managing individual accounts directed to the transacting of securities transactions with pre-established

criteria." The Examiner points to *Cristofich* (col. 2, lines 29-33) as support.

Respectfully, that stated motivation bears absolutely no relevance to the pending claims or anything else of relevance to the instant inventions. The stated motivation is meaningless as a motivation for implementing any change or combining any of the cited references. The stated motivation to combine is unsupported, it is improper, and it is simply a part of a sentence that the Examiner has extracted and modified from *Cristofich* in an effort to justify the hind-sight reconstruction of the claims from multiple pieces of prior art that individually and in combination fail to show all of the elements of the claims.

In the current and in prior Office Actions and in this and prior responses to those Office Actions, the undersigned has addressed a number of issues, but not every issue raised by the Examiner. The undersigned has focused on significant areas of distinction between the cited references and the pending claims. The undersigned's decision in this response to respond only to the significant issues instead of every point presented by the Examiner is not an admission that the Examiner is correct on those issues.

IV.   Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

Respectfully submitted,
Milbank, Tweed, Hadley & McCloy LLP

September 17, 2009

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Proposed Response for Discussion

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